

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF GEORGIA**  
**SAVANNAH DIVISION**

FILED  
JAN 10 2001  
K. Seiden

<b>KEITH G. COLEMAN</b>	)	<b>CV400-54</b>
	)	<b>underlying CR497-181</b>
<b>v.</b>	)	
	)	
<b>UNITED STATES OF AMERICA</b>	)	

**GOVERNMENT'S OBJECTION TO REPORT &  
RECOMMENDATION**

Comes now the United States of America, by and through Harry D. Dixon, Jr., United States Attorney for the Southern District of Georgia, and objects to the Report and Recommendation issued by the Magistrate Judge on January 5, 2001, in the above-styled case.<sup>1</sup> The government does not object to the Magistrate Judge's conclusion in the R&R that Keith Coleman's 28 U.S.C. § 2255 motion should be denied. Rather, the government merely objects to the Magistrate Judge's non-dispositive finding, encompassing pages 22-27 of the R&R, that the Supreme Court's decision in Apprendi v. New Jersey, 120 S. Ct. 2348 (2000), falls under the "watershed rule" exception of Teague v. Lane, 489 U.S. 288 (1989), and therefore is

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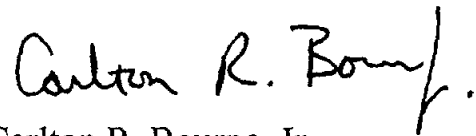
<sup>1</sup>The government notes that there is a clerical error in the R&R with regard to Coleman's sentence. R&R, p. 2. The Court imposed a sentence of 480 months as to each of counts 2, 4, 5, 6, 7, and 9, all to be served concurrently with the life sentence imposed as to count 1. See Sent. Tr. p. 57.

not precluded from retroactive collateral application in initial § 2255 proceedings. Compare Jones v. Smith, 231 F.3d 1227, 1238 (9<sup>th</sup> Cir. 2000)(non-retroactivity rule of Teague barred application of Apprendi rule to § 2254 petition), and United States v. Brown, 2000 WL 1880280 \*4 (N.D.Tex. Dec. 28, 2000)(Apprendi not watershed rule that falls within second Teague exception and so not cognizable on collateral review), and Klein v. United States, 2000 WL 1855090 \*6 (D.Wyo. Dec. 19, 2000)(Apprendi does not fall under any of the exceptions to Teague non-retroactivity rule), and Ware v. United States, 2000 WL 1827590 \*9 (M.D.Tenn. Dec. 8, 2000)(rule announced in Apprendi not watershed rule of criminal procedure within meaning of Teague doctrine, so not retroactively applicable on post-conviction review), and United States v. Johnson, 2000 WL 1801401 \*4 (D. Neb. Dec. 7, 2000)(denying § 2255 because Apprendi claim cannot be maintained based on nonretroactivity principle of Teague v. Lane), and West v. United States, 2000 WL 1790425 (D.Maryland Dec. 4, 2000)(no “watershed principle” in Apprendi requiring retroactive application under Teague in post-conviction claim), and United States v. Joseph, 2000 WL 17889989 (E.D.La. Dec. 5, 2000)(holding Apprendi should not be applied retroactively to cases on collateral review), and United States v. Pittman, 120 F.Supp.2d 1263, 2000 WL 1708962 (D.Or. 2000)(holding the determination of retroactive analysis of a new Supreme Court rule cannot depend on the facts of a particular case and Apprendi is not applicable to a post-conviction claim), with Darity

v. United States, 2000 WL 1804736 \*2 (W.D.N.C. Dec. 4, 2000)(Apprendi not Teague barred and may be retroactively applied), and United States v. Murphy, 109 F. Supp.2d 1059, 1063 (D.Minn. 2000)(finding Apprendi rule applicable under Teague exception).

Respectfully submitted,

HARRY D. DIXON, JR.  
UNITED STATES ATTORNEY

A handwritten signature in black ink, reading "Carlton R. Bourne, Jr." with a stylized flourish at the end.

Carlton R. Bourne, Jr.  
Assistant United States Attorney  
SC Bar No. 007868

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100 Bull Street, Suite 201  
Savannah, GA 31401

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing government's R&R objections has been mailed to:

Keith G. Coleman, Reg. No. 09587-021  
United States Penitentiary  
Post Office Box 26030  
Beaumont, Texas 77720-6030

This 9<sup>th</sup> day of January, 2001.

HARRY D. DIXON, JR.  
UNITED STATES ATTORNEY

A handwritten signature in black ink, appearing to read "CR Bourne, Jr.", with a vertical line extending downwards from the end of the signature.

Carlton R. Bourne, Jr.  
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